

## **COLLECTING MONEY FROM A SMALL CLAIMS JUDGMENT**

If you sued someone for money and received a judgment against that person, you have the right to collect the money.

### **How Much Can I Collect?**

You can collect the amount stated in your small claims judgment (form DC 85) plus any interest that accumulates during the time the other party pays off the judgment.

### **How Can I Collect My Money?**

There are several ways you can collect your money.

1. If the other party (defendant) has the money and is present at the trial, s/he can pay you right then.

2. If s/he does not have the money at that time and you both agree at the trial, the judge can set up a payment schedule.

If the defendant is not present at the trial, the court will send a copy of the small claims judgment to the defendant. The judgment will order the defendant to pay

you in full within 21 days or tell you and the court where s/he works and the location of his/her bank accounts on form DC 87, *Affidavit of Judgment Debtor*.

3. If the defendant doesn't pay the judgment as ordered, you will have to collect your money through an *execution against property* or a *garnishment*.

### **What Is Execution ?**

Execution is a court procedure allowing a court officer to seize property belonging to the defendant which can be sold to pay for your judgment. If you want to file an execution against property, you may use form MC 19, *Execution Against Property*.

### **What Is Garnishment?**

Garnishment is a court procedure allowing you to collect your judgment directly from the defendant's wages, bank account, or other source such as income tax refunds. If you want to file a garnishment, see the court clerk for the proper forms. Instructions are included with the forms.

For garnishing income tax, see Michigan Department of Treasury pamphlet M-1745, revised 8/95.

## **How Do I Get An Execution Against Property Or A Garnishment?**

To get an execution against property or a garnishment, you will first need to know where the defendant lives and works, what assets s/he has and where these assets are located, and any other information which identifies the defendant and his/her property.

- If you have the information described above, you can start the process for an *execution against property* or a *garnishment*.

- If you don't have the information described above, you will need to order the defendant to appear in court for questioning through a process called *discovery*. You can start this process by filing a discovery subpoena.

### **Filing a Discovery Subpoena**

You must wait 21 days after your small claims judgment was signed before you can file a discovery subpoena. Form MC 11, *Subpoena (Order to Appear)* can be used.

Contact the court for an appearance date before putting the date and location on the

form. Complete both the front of the *Subpoena* and the *Affidavit for Judgment Debtor Examination* on the back. The judge must sign the *Subpoena* before it's effective. Once the *Subpoena* is signed you must serve it on the defendant.

The fee for filing the *Subpoena* with the court varies. The cost of serving it also varies. You may include a copy of form DC 87, *Affidavit of Judgment Debtor*, with the *Subpoena* for the defendant to fill out.

#### **Filing an Execution Against Property**

You must wait 21 days after your small claims judgment was signed before you can get an execution against property. Form MC 19, *Execution Against Property*, is used to start the process. Complete the Request and Verification portion of form MC 19 and file it with the court. The filing fee varies. The court will issue the *writ* (order) by signing the form, and it will be executed by a sheriff or court officer.

**When do I get my money from an execution against property?** Any property that is seized will be sold and the money given to you. The sheriff or court officer is entitled to fees which will be deducted from

the sale of the property.

#### **Filing a Request for Garnishment**

You must wait 21 days after your small claims judgment was signed before you can get a garnishment. Form MC 12 or MC 13, *Request and Writ of Garnishment*, is used to start the garnishment process. There are **two types of garnishment**: 1) periodic, and 2) non-periodic.

A **periodic** writ of garnishment (MC 12) is used to garnish the defendant's wages, rent payments, land contract payments, or other debt which is paid to the defendant on a periodic basis. A periodic garnishment is valid for up to 91 days or until the judgment, interest, and costs are paid off, whichever occurs first.

A **non-periodic** writ of garnishment (MC 13) is used to garnish the defendant's bank account or other property. Once money has been garnished under the non-periodic writ, the writ is no longer valid. If there is a remaining balance on the judgment, you must get another writ to collect more money.

Fill in the names and addresses of both

the defendant and the garnishee on the *Request* part of the form. The **garnishee** is the person or business who has control or possession of the defendant's money. Once you complete the *Request*, you must file it with the district court that entered your small claims judgment. The filing fee is \$15.00.

The court will issue the *Writ* (order) by signing the form. The *Request and Writ* must be served on the garnishee along with the *Disclosure*, form MC 14. If the garnishment is for periodic payments, include a \$6.00 disclosure fee with the forms. The cost of serving the *Writ* varies.

**When do I get my money from the garnishment?** The garnishee has 14 days after the *Writ* is served to let you, the court, and the defendant know if any money is available for garnishment. This information will be provided on form MC 14, *Garnishee Disclosure*. If you are trying to garnish wages, you will only receive part of the wages based on a federal formula.

If money is available, it will be withheld from the defendant right away. However,

this money will be held for 28 days to allow the defendant time for objections. If there are no objections, the withheld money will be automatically sent to you after 28 days. If the garnishment is for periodic payments, money will continue to be sent to you as payments become due to the defendant until the writ expires.

**What Else Can I Do?**

If your case against the defendant involved a traffic accident, you can ask the court for an abstract of judgment which suspends the defendant's Michigan driver license until s/he pays the judgment. You must wait 30 days after the judgment date before you can get an abstract of judgment. You need to provide the defendant's full name, date of birth, and Michigan driver license number. There is no filing fee. The court clerk should have the necessary forms.